BEFORE THE
INDIANA BOARD OF TAX REVIEW

LAKE COUNTY ASSESSOR,	)	On Appeal of Determination
	)	of the Department of Local
Petitioner,	)	Government Finance
v.	)	
	)	Petition: 45-026-02-9-3-00059A
DEPARTMENT OF LOCAL	)	
GOVERNMENT FINANCE and,	)	Lake County, North Township
ISPAT INLAND, INC.,	)	
	)	Re: Ispat Inland
Respondents.	)	
	)	Assessment Date: March 1, 2002

<u>FINAL DETERMINATION FINDINGS AND CONCLUSIONS</u>

The Indiana Board of Tax Review (the Board) issues this determination in the above matter. It finds and concludes as follows:

PROCEDURAL BACKGROUND

1. On December 31, 2003, the Department of Local Government Finance (the DLGF) issued its Preliminary Certification regarding the assessed value of the Harbor Works Facility owned by Ispat Inland, Inc. (Ispat) for March 1, 2002. (LC Ex. 2.)[1] The DLGF assigned a preliminary value of $86,467,410 to the Harbor Works Facility (Harbor Works). (LC Ex. 2.; Tr. at 19.) The DLGF met with representatives of both Lake County and Ispat to explain the procedure used in developing the Preliminary Certification. (Tr. at 1394.) Lake County expressed concern that the preliminary value was too low. (Tr. at 1394.) Ispat informed the DLGF regarding physical changes to the Harbor Works Facility that occurred between July 16, 1998, and March 1, 2002. (Tr. at 1394.)

2. The DLGF issued its Final Determination regarding the assessed value for the March 1, 2002, assessment date on February 27, 2004. (LC Ex. 3; Tr. at 1395.) The DLGF assigned a final value to the Harbor Works of $81,717,900. (LC Ex. 3; Tr. at 24.) In reaching its final value of the Harbor Works, the DLGF adjusted its preliminary value to reflect buildings that had been torn down from July 16, 1998,

[1] "LC Ex." refers to Lake County's exhibits. "I Ex." refers to Ispat's exhibits. "DLGF Ex." refers to the DLGF's exhibits.

to March 1, 2002. (Tr. at 1394-95, 1411, 1438.) The DLGF assessed 132 separate parcels at the Harbor Works. (LC Ex. 3.)

3. C. Kurt Barrow, Assessment Director for the DLGF, personally faxed copies of the Final Determination to Ispat, the Lake County Assessor, the Lake County Auditor and the attorneys for the Lake County Assessor and Ispat. (Tr. at 1395.) Hard copies of the Final Determination were mailed to these same individuals. (Tr. at 1395.)

4. Lake County appealed the Final Determination to the Board using a Form 139L Petition. (LC Ex. 4.) The Form 139L Petition does not contend that the Harbor Works should be assessed at a certain value. (LC Ex. 4.) A letter outlining Lake County's disagreements with the Final Determination was submitted to the Board along with the Form 139L Petition. (LC Ex. 5; Tr. at 27-28.)

5. On November 29, 2004, counsel for Lake County submitted its Amendment of Pleadings to the Board. (LC Ex. 6.) The Amended Pleadings were filed using a Form 139 Petition. (LC Ex. 6; Tr. at 30-31.) On the Form 139 Petition, Lake County contends that the subject land should be assessed at $123,313,600 and that the subject improvements should be assessed at $235,762,440. (LC Ex. 6.)

6. On June 16, 2004, Ispat filed a Motion To Be Recognized As Party. On June 17, 2004, the Board granted Ispat's Motion. On January 3, 2005, the Board issued its Order on Ispat's right to present evidence to establish a lower assessed value allowing Ispat to present argument and evidence to prove any errors in the assessment of the Harbor Works.

7. Pursuant to Ind. Code §§ 6-1.1-8.5-11 and 6-1.1-15-4, the Board conducted an administrative hearing for this appeal on February 7-11 and 14-15, 2005. Commissioner Terry G. Duga and Senior Administrative Law Judge Michael C. Dart conducted the administrative hearing.[2]

8. Petitioner Lake County Assessor was represented by John J. Butler and Charles E. Raynal, Parker, Poe, Adams & Bernstein; Brian P. Popp, Laslo & Popp, and John S. Dull, Lake County Attorney.

9. Nandita Shepard represented Respondent Department of Local Government Finance.

10. Stephen H. Paul, Danial Roy, and Brent A. Auberry, Baker & Daniels, and Michael B. Shapiro, Honigman, Miller, Schwartz & Cohn represented Respondent Ispat Inland, Inc.

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2 Senior Administrative Law Judge Michael C. Dart took no part in this decision.

11. On February 7, 2005, the Parties filed a "Stipulation of the Parties" stating "The land portion of Ispat Harbor Works property that is the subject of this appeal consists of 1,957.02 acres."

12. The following persons were sworn as witnesses and presented testimony at the hearing on the dates indicated:

Sherry Stone (Feb. 7, 2005) – Director of Real Estate, Lake County Assessor,

Frank Kelly (Feb. 7, 2005) – Nexus Group,

Ronald Grzybowski (Feb. 7, 2005) – Delta Consulting Services, Inc.,

Terrell R. Oetzel (Feb. 7 and 8, 2005) – The Oetzel-Williams Group,

Roger Regelbrugge (Feb. 8 and 9, 2005) – Consultant,

G. Richard Kelley (Feb. 15, 2005) – Pomeroy Appraisal Associates, Inc.

Dr. George R. St. Pierre (Feb. 9 and 10, 2005) – Distinguished University Professor and Chairman Emeritus, The Ohio State University,

Lee P. Hackett (Feb. 9 and 14, 2005) – American Appraisal Associates, Inc.,

Kent Rosenbaum (Feb. 9 and 10, 2005) – Acting Section Manager of Maintenance, Inspat Inland, Inc.,

Kevin Reiter (Feb. 10, 2005) – Real Estate Tax Analyst, Baker & Daniels,

Andrew Fargason (Feb. 10 and 11, 2005) – American Appraisal Associates, Inc.,

Thomas R. Barnett (Feb. 11, 2005) – Senior Staff Engineer, Environmental Affairs, Ispat Inland, Inc.,

Dr. Jeffrey D. Fisher (Feb. 11, 2005) – Professor of Real Estate and Director of the Center for Real Estate Studies, Indiana University, Kelly School of Business,

Anthony J. Wells (Feb. 11 and 12, 2005) – American Appraisal Associates, Inc.

C. Kurt Barrow (Feb. 11, 2005) – Assessment Division Director, DLGF.

13. A list of the exhibits presented by the parties is included as Attachment A.

14. On February 23, 2005, Lake County, Ispat and the DLGF filed a Stipulated Waiver of Objections to Enlargement of Case Management Deadline that the Board approved on February 28, 2005. The Stipulated Waiver provides: (1) "That the Parties shall have through and including March 18, 2005 to file post-hearing briefs and proposed findings of fact and conclusions of law;" and (2) "That the Parties will not collectively and/or individually raise any issues relating to Indiana Code § 6-1.1-8.5-11(b)'s one-year requirement before the Indiana Board or in any appeal of this matter."

15. A list of the items officially recognized as part of the record of proceedings and labeled Board exhibits is included as Attachment B.

STANDARD OF REVIEW

16. The DLGF is statutorily assigned the responsibility to assess the real property at the Harbor Works. *See* Ind. Code § 6-1.1-8.5-8. The Lake County Assessor has the right to appeal the assessment determination of the DLGF. *See* Ind. Code § 6-1.1-8.5-11. Accordingly, the DLGF is the "assessing official" whose determination is under review, while the Lake County Assessor is the party challenging the assessment.

17. "[T]he party challenging an assessment bears the burden of demonstrating that the assessment is unsupported by substantial evidence, constitutes an abuse of discretion, exceeds the State Board's statutory authority, or is arbitrary or capricious. . . . This burden can be met when the [challenging party] presents a prima facie case in support of its position." *Canal Square Ltd. Partnership v. State Bd. of Tax Comm'rs*, 694 N.E.2d 801, 804 (Ind. Tax Ct. 1998).

18. A prima facie case "is a case in which the evidence is 'sufficient to establish a given fact and which if not contradicted will remain sufficient.'" *GTE North Inc. v. State Bd. of Tax Comm'rs*, 634 N.E.2d 882, 887 (Ind. Tax Ct. 1994); *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1233-35 (Ind. Tax Ct. 1998) (quoting *Thorntown Telephone Co. v. State Bd. of Tax Comm'rs*, 629 N.E.2d 962, 964 (Ind. Tax Ct. 1994)).

19. Once a petitioner has established a prima facie case, the burden shifts to the assessing official (here, the DLGF) to rebut the petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276, 281 (Ind. Tax Ct. 2004). Moreover, "when a [petitioner] presents a prima facie case of the existence of obsolescence and introduces evidence quantifying its effect on the property's value, the [Department] cannot simply ignore such evidence. Instead, 'when a [petitioner] offers probative evidence, that evidence must be dealt with in some meaningful manner.'" *Canal Square*, 694 N.E.2d at 805 (citing *Clark*, 694 N.E.2d at 1235).

20. Under Indiana law, as the agency charged with interpreting the true tax value, the DLGF's interpretation of true tax value must be given deference. In determining the appropriate deference to be accorded the interpretation of its rules, our Supreme Court has directed all courts to "give great weight" to an administrative agency's interpretation of a statute (1) when the interpreting agency is charged with the duty of enforcing the statute interpreted and (2) the interpretation is not inconsistent with the statute itself. *See, e.g., LTV Steel v. Griffin*, 730 N.E.2d 1251, 1257 (Ind. 2000); *State Bd. of Registration for Professional Engineers v. Eberenz*, 723 N.E.2d 422 (Ind. 2000); *State Bd. of Tax Comm'rs v. Two Market Square Assoc., Ltd. Partnership*, 679 N.E. 2d 882 (Ind. 1997); *Indiana Dep't of State Revenue v. Bulkmatic Transport Co.*, 648 N.E.2d 1156, 1158 (Ind. 1995).

21. While the Board will give deference to the DLGF's interpretation of its statute and regulations, it is not required to give deference to factual findings of the DLGF, as would a court of law. A court's review of an agency action is limited by the separation of powers clause found in Article III Section 1 of the Indiana Constitution. *See Uhlir v. Ritz*, 255 Ind. 342, 264 N.E.2d 312 (1970). The Board, being an administrative body, is not restricted by the separation of powers clause. It may, therefore, weigh the evidence and substitute its opinion for that of the DLGF.

THE HARBOR WORKS

22. The 132 parcels comprising the Harbor Works and that are the subject of this appeal are identified in the attachment to the DLGF's Final Determination. (LC Ex. 3.) A list of these parcels is included as Attachment C.

23. As of March 1, 2002, the assessment date, the Harbor Works was an integrated domestic steel mill owned and operated by Ispat in East Chicago, Indiana. (I Ex. 1, Vol. 1 at 6-1 to –3, 7-1 to -26). An integrated steel mill is a "mill that converts natural raw materials into finished steel products. It . . . [is] a mill that takes in either coal or coke and iron ore and necessary fluxing agents . . . and converts those through a series of operations to finished steel products." (Tr. at 746-47.) Ispat was directly engaged in the production and sale of steel and related products. (I Ex. 1, Vol. 1 at 6-1.)

24. The Harbor Work's land that is the subject of this appeal consists of 1,957.02 acres. (Stipulations of the Parties, ¶ 1; Tr. at 154; Tr. at 1161; Tr. at 1673.) The subject land is located on four contiguous property sites and two separate sites. (I Ex. 1, Vol. 1 at 7-1 to –4, Vol. 2, App. A (plat map); Tr. at 1676-78.) Following is a brief description and the acreage for each property site:

> <u>Plant 1 site (56.060 acres)</u>: This is the original plant site. It is bound on the north by four rail lines and the Plant 2 site,

on the south by several rail sidings and the Plant 3 site, and on the west by the U.S. Ship Canal.

Plant 2 site (1,663.520 acres): This is the main mill site. It contains the iron making, steel making, hot-strip mill, cold mills, and most of the coating operations, as well as the office building and related structures. The site is located north of the Plant 1 site and comprises the east arm of the Indiana Harbor. The Plant 2 site is a man made site created from the deposit of sand and slag fill over many years.

Plant 3 site (51.490 acres): This site is located at the northeast corner of Dickey Road and the U.S. Ship Canal. This site adjoins the Plant 1 site.

Plant 4 site (96.302 acres): This site is located at the southeast corner of Dickey Road and the U.S. Ship Canal. This site is across Dickey Road from the Plant 3 site.

Property 5 (R&D) site (53.652 acres): This site is known as the research and development site. The site is located at 3001 East Columbus Drive, near Cline Avenue, approximately two miles southeast of Plant 1. Property 5 is different than Plant 5, discussed below, and refers only to the underlying land associated with Ispat's R&D facility.

Property 6 (Frick Property) site (36.996 acres): This site is located at the southwest corner of Dickey Road and the U.S. Ship Canal, opposite the Plant 4 site. The Frick Property is bisected by the right-of-way of elevated Cline Avenue and extends south to Canal Street. It is a vacant piece of property used in no aspect of the steel making process that was for sale as of the assessment date.

(I Ex. 1, Vol. 1 at 7-1 to -4 & Vol. 2, App. A (plat map); Tr. at 1676-78.)

25. The Harbor Works Plant 2 site consists entirely of fill. (Tr. at 761.) Filling was accomplished using crushed stone, sand, slag and other plant wastes. (Tr. at 761, 1318.)

26. The improvements include land improvements and buildings. (I Ex. 1, Vol. 1 at 7-4 to -8.) The buildings include five major plants that provide office, manufacturing, warehouse, and support space. They have a total gross floor area of 15,241,616 square feet, including minor support structures. (I Ex. 1, Vol. 1 at 7-4 to -5; Tr. at 1574-75.) Approximately 430 buildings are located on the five plants. (Tr. at 1125.) As of March 1, 2002, approximately 230 of those buildings

were abandoned and 180 were either partially or fully in use. (Tr. at 1125.) Following is a brief description for all buildings (including abandoned and underused) located on each plant:

> Plant 1 (1,226,181 square feet): This is the original steel plant. The buildings were constructed on a piecemeal basis from 1901 to 1976. Buildings still in use house a galvanizing line. Other areas are used for maintenance and storage.
>
> Plant 2 (11,944541 square feet): The buildings were constructed on a piecemeal basis from 1913 to 1989. Buildings still in use house the majority of the manufacturing processes of all the plants. Specifically, processes that have not been shut down are the blast furnace, basic oxygen furnaces ("BOF"), continuous castor, hot roll mill and the cold roll mill. The cold roll mill includes pickling, annealing and galvanizing. Other functional areas are used for maintenance, warehousing and storage. PCI is a support service for the No. 7 blast furnace and is part of Plant 2.
>
> Plant 3 (128,749 square feet): This plant is not operating and was abandoned completely as of March 1, 2002. The structures are no longer maintained. All of the building area is in very poor condition and is being razed for scrap value. Plant 3 has not operated since the early 1990s.
>
> Plant 4 (1,651,784 square feet): Plant 4 was originally constructed in the 1940s to manufacture tank turrets for the United States Army. Buildings were constructed from 1942 to 1991. Buildings still in use house the electric arc furnace, billet caster and the 12-inch bar mill. Other areas are used for warehousing, maintenance and storage.
>
> Plant 5 (290,360 square feet): Plant 5 is a term used for descriptive purposes only and consists of three noncontiguous sites: (1) the research and development site, which has two structures used as lab and testing areas (the first constructed in 1967 and the second from 1983 to 1989); (2) the main office building, which adjoins Plant 1 and houses the corporate and plant operational offices (constructed in 1930 with additions in 1978); and (3) an abandoned office adjoining Plant 4 (constructed in 1943).

(I Ex. 1, Vol. 1 at 7-4 to -8; Tr. at 1574-75.)

27. As of the March 1, 2002, Ispat no longer produced plates (ended 1995), rails (ended 1930s), tin plate (ended 1970) and structural steel (ended 1980s). (Tr. at 757; I Ex. 31.)

28. The major factors affecting the history of plant development at the Harbor Works include technological changes over the past 100 years, such as the development of the BOF process in the late 1950s and continuous casting in the 1960s. (Tr. at 753-54.) Ispat Ex. 31 illustrates the current process flow at the Harbor Works.

29. Numerous changes were made in order to keep up with product changes and customer demand, including the development of low sulfur steel and high-strength steels. (Tr. at 760; I. Ex. 32.) Land restrictions required Inland Steel Company to "manufacture" the 1,600 plus acres of the Plant 2 site from fill. (Tr. at 762; I Ex. 32.) Competition from mini mills, foreign producers and domestic integrated producers impacted development. (Tr. at 763-66; I Ex. 32.) **[REMAINDER OF PARAGRAPH REDACTED]**

30. In an integrated steel mill, the mill starts with coal or coke and iron ore and finishes with steel products. There are several steps in the process. (Tr. at 1709-12.)

31. Kent Rosenbaum, Acting Section Manager of Maintenance, has been involved with logistics at the Harbor Works for approximately twenty-five years. (Tr. at 866-75.) Mr. Rosenbaum described the logistics involved at the Harbor Works with respect to the iron making, steel making, hot rolling, cold rolling, waste removal and shipping points at the Harbor Works. (Tr. at 886-995.)

32. Iron making takes place at the No. 7 blast furnace in the northwest corner of Plant 2 and at the Nos. 5 and 6 blast furnaces located in the south central part of Plant 2. (Tr. at 890, 900-01.) **[REMAINDER OF PARAGRAPH REDACTED]**

33. Steel making takes place at three different shops: (1) No. 4 BOF, in the north central part of Plant 2; (2) No. 2 BOF, in the south central part of Plant 2; and (3) at the EAC, in Plant 4. (Tr. at 890-91.) **[REMAINDER OF PARAGRAPH REDACTED]**

34. Hot rolling is the process whereby slabs that are either produced at the Harbor Works or purchased by Ispat are taken to the 80-inch mill, reheated, and run through a rolling line and rolled into a coil. (Tr. at 891-92.) **[REMAINDER OF PARAGRAPH REDACTED]**

35. Cold rolling refers to operations used to process hot band into further flat products required by customers, including pickling, cold reduction (tandem mill), annealing, skin-pass or temper rolling. (I Ex. 1, Vol. 1 at 7-12; Tr. at 892-93.) **[REMAINDER OF PARAGRAPH REDACTED]**

36. The steel making process generates a lot of waste, especially slag. (Tr. at 893.) Slag is produced in all of the iron making and steel making processes at the Harbor Works. (Tr. at 893.) **[REMAINDER OF PARAGRAPH REDACTED]**

37. Shipping points at the Harbor Works are located at the ends of processing in certain areas. (Tr. at 894.) **[REMAINDER OF PARAGRAPH REDACTED]**

38. The Harbor Works is subject to a 1993 federal consent decree signed by Inland Steel Company (not Ispat) with the United States Environmental Protection Agency ("EPA"). (I. Ex. 21; Tr. at 1309.) The consent decree applied to the Harbor Works as of March 1, 2002. (Tr. at 1309.) The consent decree covers the Resource Conservation Recovery Act ("RCRA"), the Federal Clean Air Act, the Clean Water Act and the Safe Drinking Water Act. (Tr. at 1310.) Corrective actions pursuant to the consent decree require an extensive investigation into the surface, subsurface and groundwater conditions to ascertain if there are continuing releases at the subject site and to see if there is any threat to human health or the environment. (Tr. at 1311.) The investigation began in 1993. It was active throughout 2002 and continues to the present. (Tr. at 1311.)

39. **[PARAGRAPH REDACTED]**

40. **[PARAGRAPH REDACTED]**

41. **[PARAGRAPH REDACTED]**

42. **[PARAGRAPH REDACTED]**

43. **[PARAGRAPH REDACTED]**

44. **[PARAGRAPH REDACTED]**

45. **[PARAGRAPH REDACTED]**

46. **[PARAGRAPH REDACTED]**

THE DLGF'S POSITION

47. In 2001, the Legislature directed the DLGF to assess all industrial facilities with an estimated true tax value greater than twenty-five million dollars ($25,000,000). Ind. Code § 6-1.1-8.5. The DLGF identified four such properties in Lake County: 1) BP America Refinery in Whiting; 2) International Steel Group Integrated Steel Mill in East Chicago; 3) Ispat Inland Integrated Steel Mill in East Chicago; and 4) United States Steel Corporation's Integrated Steel Mill in Gary. *Valuation of the Lake County Industrial Facilities Greater than $25M in Value for the 2002 General Reassessment* (July 2004) (DLGF Ex.1 at 3.)

48. In July 2003, the DLGF sent letters to each of the tax departments of the facilities notifying them of the statutory responsibility to assess the property and requested certain assessment data. *Id.* at 3. This assessment data consisted of maps, plats, construction data, any appraisals that had been conducted on the property, any sales of a comparable property, and any other information the taxpayer thought was relevant. *Id*. Late in July 2003, the DLGF sent a follow-up letter again requesting assessment data from the tax departments. (DLGF Ex. 1. at p. 3.) The DLGF also notified them that it would be contacting them regarding a time and a date to conduct an on-site meeting and tour of the facility. *Id*.

49. Ispat provided the requested information, including schematic drawings and an allocation appraisal conducted by Deloitte and Touche (D & T) for Ispat's purchase of the facility. (Tr. 1410.)

50. The DLGF conducted the Ispat on-site meeting and tour of the facility in the summer of 2003. (DLGF Ex. 1. at p. 3.)

51. Based on these meetings and property data, the DLGF calculated a preliminary certification of the true tax value of Ispat's property of approximately $86,467,410. Notice was mailed to Ispat, its attorney of record, and the Lake County Assessor in December 2003 pursuant to 50 IAC 19-2-3 (a). *Id*.

52. The DLGF met with Ispat and Lake County officials in January 2004 to explain the methodology used in arriving at the true tax value of Ispat's property. (DLGF Ex. 1 at 4). The DLGF told Ispat that to arrive at a value for the 2002 assessment date, the physical and market conditions that existed on March 1, 2002, should be trended back to value-in-use as of January 1, 1999. *Id*.

53. In determining the assessment for Ispat, C. Kurt Barrow, the assessment director for the DLGF and responsible for the assessment of Ispat, researched steel trade publications from the internet and looked at the price per ton of steel domestically. (Tr. 1277.) Mr. Barrow concluded that the price of steel on March 1, 2002, was very similar to the price of steel in July 1998 when Inland Corporation sold to Ispat International. (Tr. 1392.) Mr. Barrow then explained to Ispat and Lake County that he established the land value at $19,000 per acre based on the Deloitte and Touche appraisal. (Tr. 1277-78.)

54. To arrive at an assessed the value of improvements, Mr. Barrow utilized the sales approach because two of the three integrated steel mills in Lake County sold between 1998 and 2002. (DLGF Ex. 1 at 9.)

55. Mr. Barrow identified seven sales of integrated steel mills where both buyers and sellers were steel companies. (DLGF Ex. 1 at 11.) These sales were 1) Ispat International's purchase of Inland Steel, 2) sale of LTV to International Steel Group ("ISG"), 3) ISG's purchase of the Bethlehem Steel facility in Burns Harbor, 4) ISG's purchase of a LTV facility in Cleveland, Ohio; 5) USS's purchase of National Steel's Great Lakes, Michigan plant; 6) USS's purchase of

the National Steel facility in Granite City, Illinois; and 7) USS's purchase of National Steel's facility in Portage. (DLGF Ex. 1 at 11.)

56. Mr. Barrow reduced the real property total of the comparable sales to economic units of comparison with a total sale price per ton of capacity, a total sale price per ton of production, a sale price of the real property only per ton of capacity, and a sale price of real property per ton of production. (Tr. 1389-90; DLGF Ex. 1 at 10.) After reviewing these economic units of comparison, he determined that the sale of the subject was the best comparable and placed all weight on this sale. (Tr. 1393; DLGF Ex. 1 at 13.)

57. Lake County filed a written appeal of the preliminary determination pursuant to 50 IAC 19-2-3(b).

58. Ispat informed the DLGF that several buildings had been torn down since July 1998 and March 1, 2002, and identified them. (Tr. 1394.)

59. On February 27, 2004, the DLGF issued its final determination. It reduced the assessed value to $81,717,900 based on evidence that certain buildings no longer exist.

60. Following the receipt of the final determination, Lake County filed a formal appeal of the final determination to the Indiana Board of Tax Review (IBTR) pursuant to 50 IAC 19-2-4(a), claiming that the DLGF had incorrectly assessed Ispat's property.

61. Ispat did not appeal the DLGF's final determination.

62. In July 2004, the DLGF released *The Valuation of the Lake County Industrial Facilities Greater than $25M in value for the 2002 General Reassessment* (The White Paper). It explained how the DLGF arrived at the assessed valuation for Ispat and three other industrial facilities. (Tr. 1276.) The DLGF provided six reasons for its reliance on the Ispat Sale. (DLGF Ex. 1 at 13.) These reasons are as follows:

- The sale represented the sale of one of the three subject properties.
- The sale was an arms length transaction.
- **[BULLET POINT REDACTED]**
- The steel economy was in a "good" period. That is, the effects of foreign steel dumping and overcapacity in the domestic market had not yet been reflected in the domestic steel prices.
- The Inland sale was the only sale not out of bankruptcy.
- The sale price was supported by an appraisal conducted by Deloitte and Touche. The appraisal was completed for the

> sale of the property and not as part of a property tax appeal. The appraisal complied with the standards and rules of the *Uniform Standards of Professional Appraisal Practice* (USPAP).

(DLGF Ex. 1 at 13).

LAKE COUNTY'S POSITION

63. Lake County's appraiser considered land sales in the vicinity of the Harbor Works. (Lake County Ex. 17 at 48, A-64.) Only one of these sales involved comparable waterfront access, though all were in areas close to Lake Michigan. (LC Ex. 17 at 49, A-64.)

64. These comparable sales demonstrated unadjusted values for non-waterfront parcels ranging from $19,029 an acre for a 206-acre tract in Chicago to $103,448 an acre for a 29-acre tract in Hammond, Indiana. (LC Ex. 17 at 48 and A-64.) The average unadjusted price per acre of all the sites considered by Lake County's appraiser, including the one waterfront sale, was $41,817 an acre. Lake County's appraiser concluded that the land underlying the Harbor Works was worth $35,000 an acre for a total true tax value for the land of $68,495,700. (LC Ex. 17 at 50.)

65. Lake County's appraiser found that comparables 1 through 6 in his analysis, being in the immediate vicinity of the subject property, should be given the most weight in his analysis. (LC Ex. 17 at 50.) He took these sales in the immediate vicinity of the subject site, which averaged $25,000 to $26,000 an acre, and adjusted them upward 30 percent for lack of water frontage to arrive at an indicated price of $33,000 an acre rounded to $35,000 an acre. *Id.*

66. Lake County's cost estimator, Ron Grzybowski employed the Marshall Valuation Service cost manuals for the purpose of estimating the reproduction cost new and replacement cost of the buildings. (Tr. 181.) He did not apply the Indiana Guidelines because he "considered the guidelines as a mass appraisal tool, not necessarily an appraisal tool." (Tr. 223.) He stated "my cost estimate is prepared for appraisal purposes, for market appraisal purposes, value and continued use as opposed to an assessment." *Id.*

67. Mr. Grzybowski performed an analysis of the buildings and yard improvements at the Harbor Works. Mr. Grzybowski began with the building descriptions contained in the D&T study, which Ispat represented were correct in interrogatory responses. (Tr. 180; LC Ex. 15.) He adjusted

for buildings that had been added to the property and for buildings that had been torn down or abandoned. (Tr. 183 – 185; Lake County Ex. 17 at 79, 93; LC Ex. 36.) Further, Mr. Grzybowksi "scaled drawings" to confirm that D&T had properly measured the buildings and then recalculated the costs using the same methodology D&T represented that they had used. He concluded that those calculations were "generally acceptable for my use." (Tr. 181.)

68. Mr. Grzybowski also estimated the costs of the yard improvements based on the information Ispat provided. (Tr. 189-190.) He employed the Marshall Cost Valuation Service to calculate the replacement costs of those yard improvements. (Tr. 190.) Because Ispat did not make any representation regarding the existence of other yard improvements – slag roadways, slag paving, yard drainage, fire loop, and sheet pile – Mr. Grzybowski relied on his observations during site visits to estimate the costs of these additional yard improvements. (Tr. 191.) He also performed a comparative analysis between the Harbor Works and U.S. Steel's Gary Works to estimate square footage of these improvements. (Tr. 191-192.) He likewise relied on his experience and cost estimates he had performed in other appraisals for estimating the cost of yard drainage and fire loop. (Tr. 192.) Finally, Mr. Grzybowski consulted railroad and marine contractors familiar with the types of construction at the Harbor Works to confirm that his calculations were proper. *Id.*

69. Mr. Grzybowski estimated the reproduction cost new of the buildings as **[NUMBER REDACTED]**. (LC Ex. 17 at 58.) Lake County's appraiser adopted that reproduction cost and adjusted it from July 1998 to the assessment date of March 1, 2002, which yielded a reproduction cost new of **[NUMBER REDACTED]**. *Id.* at 97. Similarly, Lake County's appraiser used Mr. Grzybowski's estimate of the cost of abandoned buildings and the reduced cost of constructing the plant with modern materials as a basis to adjust the cost downward by **[NUMBER REDACTED]**. *Id.* at 103. Based on these adjustments, Lake County's appraiser estimated that the adjusted reproduction cost new was the same as replacement cost, **[NUMBER REDACTED]**. (LC Ex. 17 at 97, 103; Tr. 279-81.)

70. Lake County's appraiser made further downward adjustments for incurable physical depreciation **[NUMBER REDACTED]**, underused building space **[NUMBER REDACTED]**, overall depreciation **[NUMBER REDACTED]**, and deferred maintenance **[NUMBER REDACTED]**. This analysis yields a true tax value for the buildings at the Harbor Works

in the amount of **[NUMBER REDACTED]**. (LC Ex. 17 at 97-99, 101-03; Tr. 281-89.)

71. Lake County's appraiser accepted Mr. Grzybowski's cost estimation of the yard improvements in the amount of **[NUMBER REDACTED]**. He then estimated physical depreciation of 85 percent, and deducted an additional 10 percent in overall depreciation to arrive at a yard improvement true tax value of **[NUMBER REDACTED]**. (LC Ex. 17 at 101-03; Tr. 287-88.)

72. Finally, Lake County's appraiser added the true tax value of the buildings and yard improvements to calculate a total value of **[NUMBER REDACTED]**, which adjusted from January 1, 1999, to the assessment date resulted in true tax value of **[NUMBER REDACTED]** for the improvements (rounded). (LC Ex. 17 at 103; Tr. 289-90.) This represented a valuation as of January 1, 1999, given the property condition on March 1, 2002, and market factors that might affect the property as of that assessment date. (Tr. 246.)

73. **[PARAGRAPH REDACTED]**

74. Lake County primarily relied on evidence from two expert witnesses, Terrell Oetzel and Frank Kelly, to support its contention the assessed valuation of the Harbor Works is too low.

75. Mr. Terrell Oetzel prepared an appraisal report concluding that the true tax value for the Harbor Works as of the March 1, 2002, assessment date was **[NUMBER REDACTED]**. (LC Ex. 17 at 104.) This value represents Mr. Oetzel's opinion of value at the time of the administrative hearing. (Tr. at 247.) The Oetzel Appraisal purports to be a "self-contained" report that meets USPAP standards and "contains, to the fullest extent possible and practical, explanations of the data, reasoning, and analysis that were used to develop the opinion of value." (LC Ex. 17 at 1, 11, 19.) Mr. Oetzel agreed that the type of appraisal report used has no impact on the validity of the value conclusion reached. (Tr. at 494.) His appraisal concluded that the highest and best use of the Harbor Works as improved is "for continued use as an integrated steel mill," which is "totally consistent" with its current use. (LC Ex. 17 at 43; Tr. at 258, 367.) Mr. Oetzel testified that if one component of his cost analysis is wrong, then his value conclusion "absolutely" is wrong. (Tr. at 366-67.)

76. Mr. Oetzel agreed that an appraiser must accurately describe the property that is the subject of a self-contained appraisal report. (Tr. at 344.) The Oetzel Appraisal contains no legal description of the subject property. (Tr. at 247-48, 333.) The Oetzel Appraisal describes the Harbor Works as having 4 blast furnaces and a basic oxygen processing shop or "BOP." (LC Ex. 17 at 40-41.) Mr. Oetzel testified that he observed each of the four blast furnaces. (Tr. at 341.) The Oetzel

Appraisal states, "The Harbor Works also produces special quality bar, plate, and structurals." (LC Ex. at 40.) Mr. Oetzel testified that he personally observed structural steel being produced in the bar mill. (Tr. at 340-41.)

77. The Harbor Works has only 3 blast furnaces and two BOFs. (I Ex. 1, Vol. 1 at 12-2.) Ispat did not produce plate or structural steel as of March 1, 2002. (Tr. at 757; I Ex. 31.)

78. **[PARAGRAPH REDACTED]**

79. Mr. Oetzel testified that Indiana prefers replacement cost, not reproduction cost. (Tr. at 381.) Replacement cost is based on the principal of substitution, which says that the alternative to acquiring a subject property is to build a new one. (Tr. at 444.) He agreed that somebody building a new building would do so based on modern design and layout. (Tr. at 444.) He admitted that his replacement plant does not represent a modern layout and design of buildings. (Tr. at 444-45.) He further admitted that he made no analysis as to whether the same production levels could be achieved in a smaller building area by reconfiguring the layout of the buildings. (Tr. at 429.) Mr. Oetzel made no attempt to analyze excess operating expenses. (Tr. at 465.) Mr. Oetzel admitted that he was not expert enough to deal with the question of excess operating expenses. (Tr. at 492.) Mr. Oetzel conceded that the locations of buildings on a site are important in determining functional obsolescence because location can affect excess operating costs. (Tr. at 354-55.)

80. The Oetzel Appraisal applied the building descriptions from the D & T appraisal. (Tr. at 244, 342.) Mr. Oetzel and his cost estimator, Mr. Grzybowski, made no independent measurements of the buildings. (Tr. at 237.) Mr. Oetzel determined what he deemed to be a "replacement" cost new for the subject buildings and yard improvements of approximately **[NUMBER REDACTED]**. (Tr. at 425; LC Ex. 17 at 103.) He determined this number by taking the reproduction cost for all buildings **[NUMBER REDACTED]** as determined by Mr. Grzybowski and adjusted from 1998 to 2002 dollars, deducting for abandoned building space **[NUMBER REDACTED]** and adjusting for metal construction in lieu of masonry **[NUMBER REDACTED]** and underused space **[NUMBER REDACTED]**. He added yard improvements **[NUMBER REDACTED]** and adjusted to 2002 dollars. (Tr. at 425-26; LC Ex. 17 at 103). Mr. Oetzel calculated total physical depreciation of approximately **[NUMBER REDACTED]**. (Tr. at 427; LC Ex. 17 at 103.) Thus, he determined the replacement cost less physical depreciation to be approximately **[NUMBER REDACTED]**. (Tr. at 428; LC Ex. 17 at 103.)

81. Mr. Oetzel applied an "overall depreciation" adjustment of 10 percent to both the buildings and yard improvements. (Tr. at 284; LC Ex. 17 at 101-03.) He describes the 10 percent adjustment as a "hedge" against missed depreciation. (Tr. at 284.) The estimate is based on previous appraisals. He has used the

"hedge" for many types of industrial properties, including an industrial warehouse built in 1989 for a 1999 appraisal. (Tr. at 284, 417-22, 523.) Mr. Oetzel in fact routinely takes the hedge for large properties. (Tr. at 320.) His appraisal claims the 10 percent "hedge" for the buildings "represents curable and incurable functional obsolescence within the buildings." (LC Ex. 17 at 101.) Mr. Oetzel testified the 10 percent hedge could be for functional obsolescence or physical depreciation. The "hedge" is not for either economic obsolescence or to account for environmental contamination. (Tr. at 393-95.) He identified no cause of functional obsolescence for which the 10 percent "hedge" should be taken. (Tr. at 421.) No part of the "hedge" accounts for legacy costs. (Tr. at 406.) The Oetzel appraisal takes no functional obsolescence except that built into its "replacement" cost and any included in the 10 percent "hedge." (Tr. at 415.) The 10 percent "hedge" does not account for excess operating expenses suffered by the facility. (Tr. at 467-68.) The "hedge" for the "overall depreciation" is not a recognized appraisal concept. (Tr. at 410.) Furthermore, the "hedge" is not found in USPAP and is not supported by *The Appraisal of Real Estate*. (Tr. at 524-25.)

82. Lake County's review appraiser, Mr. G. Richard Kelley, testified that the 10 percent "hedge" is a "problem" and is a "big issue" in this appeal because there are "functional problems" at the Harbor Works. (Tr. at 1867-68.). Mr. Kelley viewed the 10 percent "hedge" as an "admission that [Mr. Oetzel] didn't know how to accurately assess functional problems" and that Mr. Oetzel "rejected other measures such as a replacement plant concept to accurately reflect" functional obsolescence. (Tr. at 1867.). Mr. Oetzel "didn't know how to come to a conclusion" regarding the proper quantification of functional obsolescence. (Tr. at 1867.). There is "no basis" for the "hedge," although an appraiser could use a replacement concept to determine excess operating costs. (Tr. at 1894.)

83. Mr. Oetzel provides no support, other than his subjective judgment, for the $2.00 per square foot market adjustment for deferred maintenance on page 98 of his "self-contained" appraisal report. (Tr. at 522; LC Ex. 17 at 98, 103.)

84. Mr. Oetzel provides no support, other than his subjective judgment, for the 75 year estimated life for steel buildings on page 99 of his "self-contained" appraisal report. (Tr. at 522; LC Ex. 17 at 99, 103.)

85. Mr. Oetzel provides no support, other than his subjective judgment, for the 85 percent physical depreciation applied to yard improvements on page 102 of his "self-contained" appraisal report. (Tr. at 525; LC Ex. 17 at 101-03.)

86. The Oetzel Appraisal concludes that the land value for the Harbor Works, as of March 1, 2002, is $35,000 per acre, which is then time adjusted to $32,785 per acre as of January 1, 1999. (Tr. at 266; LC Ex. 17 at 50, 103.)

87. Mr. Oetzel identified 12 sales as comparable. (Tr. at 266; LC Ex. 17 at 48-50.) The first 6 sales are located in Lake County. (Tr. at 267; LC Ex. 17 at 48-49.)

The sales range in size from 5.01 acres to 206 acres. (LC Ex. 17 at 48.) Mr. Oetzel identified all those sales except one as "cash" sales. Sale No. 8 is identified as a "new loan." (LC Ex. 17 at 48.) He applied an adjustment of 2 percent per year for market conditions. (Tr. at 290; LC Ex. 17 at 48-49.) Only one sale, Sale No. 7 (the Solo Cup sale) had water access. (Tr. at 267; LC Ex. 17 at 48-49.) His appraisal applied a +30 percent adjustment to comparables for water access based on a comparison of the Solo Cup sale to Sale No. 10. (Tr. at 267; LC Ex. 17 at 48-49.) The Oetzel appraisal applied a -20 percent adjustment for size to the comparables, which were at least 1,750 acres smaller than the Harbor Works. (Tr. at 270; LC Ex. 17 at 48-49.) The appraisal applied +5 percent or +10 percent adjustments to some comparables for freeway access. (Tr. at 272-73; LC Ex. 17 at 48.) Mr. Oetzel relied primarily on the first 6 transactions to arrive at his value conclusion. (Tr. at 273, 470; LC Ex. 17 at 50.) His appraisal concluded that the unadjusted averages for these sales was $25,000 to $26,000 per acre and then adjusted those values upwards 30 percent for water access, resulting in an approximate $33,000 per acre value. He increased that amount to $35,000 per acre. (LC Ex. 48 at 50.)

88. Mr. Oetzel's +30 percent adjustment for water frontage is not supported by the facts of the Solo Cup sale. Mr. Oetzel erroneously concluded a $76,269 per acre price for the Solo Cup sale. (Tr. at 268; LC Ex. 17 at 48.) Mr. Oetzel understood the Solo Cup sale to include cash and "some notes." (Tr. at 482.) He treated the sale as a cash equivalent transaction. (Tr. at 483.) He conceded that the Solo Cup sale was "complicated." (Tr. at 488.) The transaction involved 3 parties: Solo Cup, US Steel, and the City of Chicago. (Tr. at 483.) According to sworn testimony from a US Steel witness, United States Steel received $4.7 million in cash from the buyer. (Tr. at 484.) The seller also received Tax Increment Financing or "TIF" notes, payable in two stages (one for $3 million, one for $1.2 million) by the City of Chicago. (Tr. at 484-85.) To date, US Steel has received no payment on the TIF notes. (Tr. at 485.) At the closing, US Steel paid back to Solo Cup $1.2 million for improvements. (Tr. at 485-86.) US Steel also was required to locate utility and rail lines on the property, at a cost of $3.3 million. (Tr. at 486.) In addition, US Steel was required to give the City of Chicago 32 acres for roads and 100 acres for parks. The City of Chicago was obligated to spend $57 million for infrastructure. (Tr. at 487.) Mr. Oetzel agreed that *the best* US Steel could receive, (*if* the TIF notes are actually paid) is approximately $4.4 million, not the $8.9 million identified in the Oetzel appraisal. (Tr. at 486-87.) Nevertheless, Mr. Oetzel insisted that the sale price is "absolutely" a good comparable and should be used. (Tr. at 267-68, 488.) He insisted that the Solo Cup transaction was an $8.9 million cash equivalent sale. (Tr. at 551-53.) Despite Mr. Oetzel's insistence to the contrary, the Solo Cup sale clearly does not have a cash equivalency of $8.9 million.

89. Mr. Oetzel provides no support, other than his subjective judgment, for the +30 percent water frontage adjustment on page 49 of his "self-contained" appraisal report. (Tr. at 494-95; LC Ex. 17 at 49.)

90. Mr. Oetzel provides no support, other than his subjective judgment, for the freeway access adjustments on page 48 of his "self-contained" appraisal report. (Tr. at 495, 521-22; LC Ex. 17 at 48.)

91. Mr. Oetzel provides no support, other than his subjective judgment, for the -20 percent size adjustment on page 49 of his "self-contained" appraisal report. (Tr. at 495, 521; LC Ex. 17 at 49.) Mr. Oetzel treated every parcel between 5 and 206 acres as being of comparable size. (Tr. at 496-97.) No market evidence supported this conclusion. (Tr. at 497.)

92. Mr. Oetzel elected not to apply the sales comparison approach to value the Harbor Works, because six of seven sales identified by the DLGF were based upon bankruptcy and the 1998 Ispat sale was an allocation appraisal, not a value-in-use appraisal. (Tr. at 261-63; LC Ex. 17 at 45.) He conceded, however, that bankruptcy sales exclude legacy costs and such exclusion is actually an advantage of using bankruptcy sales as comparables to determine value-in-use. (Tr. at 407-10.) He opined that a bankruptcy sale of the real estate assets alone of an integrated steel mill might meet Indiana's market value-in-use standard. Nevertheless, he agreed that a sale of real estate assets alone was probably not feasible. (Tr. at 264, 442.) In examining the validity of a sale, one thing to consider is whether the property was marketed to potential buyers. (Tr. at 439.) Mr. Oetzel did no investigation about how the sales identified in the DLGF White Paper were marketed. (Tr. at 439.) Mr. Oetzel conceded that one reason to determine the highest and best use of a property as improved is to identify comparable sales. (Tr. at 371.) The D & T Appraisal uses the same definition of use value as found in the Indiana Manual. (Tr. at 556-57.)

93. Mr. Oetzel did not apply the income approach to value the Harbor Works, because integrated steel mills are owner operated and therefore there is insufficient market rental data to apply the income approach. (Tr. at 259; LC Ex. 17 at 19.) Nevertheless, Mr. Oetzel identified golf courses and landfills as types of property that he has valued using the income approach without market rental data. (Tr. at 386-88.) Mr. Oetzel has valued hotels based on the income stream. (Tr. at 388-89.) He also has valued an electric generating plant based on the income approach without having rental data. (Tr. at 389-90.) Accordingly, it is not a "novel concept" to value a property using such types of income data. (Tr. at 390-91.) In fact, Mr. Oetzel agreed that the income approach is used in this manner "all the time by appraisers" and it is "not necessary" to have market rental income in order to perform an income approach to arrive at the value of real property. (Tr. at 390-93.)

94. Mr. Oetzel concluded that no external obsolescence applied to the Harbor Works as of the assessment date because of the cyclic nature of the steel industry. (Tr. at 300-01; LC Ex. 17 at 101.) Mr. Oetzel conceded that the automobile industry is cyclical and that he previously assigned economic obsolescence to an auto

stamping plant due to external factors related to being in a low point of the business cycle. (Tr. at 430-31.) Mr. Oetzel agreed that a downturn in the business cycle is a factor that should be considered in regard to economic obsolescence. (Tr. at 433.) There "probably" was overcapacity in steel mills in the United States as of the assessment date, but Mr. Oetzel undertook no investigation and made no inquiries concerning overcapacity. (Tr. at 450-52.)

95. **[PARAGRAPH REDACTED]**

96. An appraisal is a "logical application of available data to reach a value conclusion." (Tr. at 323.) The Oetzel appraisal does not meet this definition.

97. Mr. Oetzel prepared a letter dated January 17, 2005, regarding an error in his appraisal and discussing additional information regarding square footage. (LC Ex. 18.) Although the letter shows a revised "indicted value" for the Harbor Works, the letter does not contain a revised conclusion of value. It was merely a hypothetical number, and not a proposed conclusion of value. (Tr. at 294.)

98. The Harbor Works is a special purpose property. The starting point for the assessment of a special purpose property is the application of the Indiana Assessment Guidelines. (Tr. at 41-44.) An assessment performed under the Guidelines is presumed to be correct, but an assessor may consider other relevant evidence of value. (Tr. at 44-45.)

99. Mr. Kelly testified that he applied the Indiana Assessment Manual and Guidelines to make a preliminary assessment of the Harbor Works. (Tr. at 48.) To prepare his preliminary assessment, Mr. Kelly obtained property record cards for the Harbor Works, entered the information onto a spreadsheet, and reviewed the land allocations and pricing on the cards. (Tr. at 48-49, 120-21.) Mr. Kelly took a driving tour of the Harbor Works, but did not have the property record cards at the time of the tour. (Tr. at 129.) Mr. Kelly entered the main office of the Harbor Works, but he took no measurements of any building. (Tr. at 114.) He did not verify data on the property record cards. (Tr. at 122.) He does not know who prepared the property record cards that he used. (Tr. at 114.) He does not know if the persons who prepared the cards actually saw or inspected the buildings. (Tr. at 117.) Mr. Kelly acknowledged that actually inspecting buildings would make better assessments. He agreed that if the property record cards contained errors, his preliminary analysis would be incorrect. (Tr. at 122.)

100. Mr. Kelly's preliminary assessment for the improvements at the Harbor Works was **[NUMBER REDACTED]**, which he called the "starting point" for an assessment under Appendix F of the Guidelines. (Tr. at 51; I Exs. 40, 42.) Mr. Kelly agreed that the buildings had not dramatically changed from 1992-2002. (Tr. at 125.) Mr. Kelly estimated reproduction cost, not replacement cost. (Tr. at 131.) Mr. Kelly testified that the Manual prefers a determination of reproduction cost for special use properties. (Tr. at 141.) He eliminated no abandoned

buildings from his calculation of reproduction costs. He excluded no unused areas. (Tr. at 138.) Mr. Kelly assessed 6 parcels (including one with a $2.8 million value for improvements) that were not owned by Ispat and that were not included as part of the DLGF's Final Determination.[3] (Tr. at 128; I Ex. 51.) Mr. Kelly does not know if Ispat owned these 6 parcels as of March 1, 2002. (Tr. at 164.)

101. Mr. Kelly applied the abnormal obsolescence already assigned on the property record cards. Mr. Kelly personally applied no obsolescence to improvements. (Tr. at 124.) He conceded that excess construction, operating, and inventory costs must be considered if the assessor agrees with the information supporting the penalties. (Tr. at 132.) Mr. Kelly did not ask Ispat personnel about excess operating costs. (Tr. at 125.) He did not attempt to form an opinion about what additional sources of obsolescence might be applicable. (Tr. at 145.)

102. Mr. Kelly agreed that, under Indiana law, value-in-exchange can equal value-in-use. (Tr. at 147.) Mr. Kelly did not think the 1998 sale of the Harbor Works represents a value-in-use transaction. (Tr. at 147.) He opined that for a sale of an integrated steel mill to represent a value-in-use transaction, it must be an arm's length sale exclusively of the real estate and contain no personal property, no intangible assets and no legacy costs. (Tr. at 147-48.) Mr. Kelly further asserted that the following quote from the INTERNATIONAL ASSOCIATION OF ASSESSING OFFICIALS ("IAAO"), *Property Tax Assessment Valuation* 16 (2d ed. 1996) does not apply to the market value-in-use standard for Indiana: "When a property is utilized at its highest and best use, its value in use and its value in exchange are the same." (Tr. at 134-37.)

103. Lake County also asked Mr. Kelly to determine how the subject land would have been assessed pursuant to the methodology applied by Cole-Layer-Trumble ("CLT") to other industrial property in Lake County. (Tr. at 140.) CLT is the mass appraisal firm hired by the DLGF to assess all property in Lake County for the 2002 general reassessment, except for those industrial facilities over $25 million in value. (Tr. at 52-53, 1266.) CLT established base rates for land in Lake County. (Tr. at 1266.) Ispat Ex. 39 is a neighborhood valuation form prepared by CLT that applies to industrial properties in East Chicago, Indiana. (Tr. at 1447.) A memo dated February 9, 2004, (the "CLT memo") explains the methodology used by CLT to assess land in Lake County. (Tr. at 53, 1159, 1268; I Ex. 38.)

104. Before knowing that the CLT Memo existed, Mr. Kelly assigned an initial land value of **[NUMBER REDACTED]**. (Tr. at 52, 86.) This amount included an assessment of approximately $4.9 million for the 6 parcels not owned by Ispat and

[3] The parcels not owned by Ispat and not assessed by the DLGF are the final 6 parcels listed on Ispat Ex. 40 at 4. Property record cards for these parcels are included with Ex. 51; no other property record cards for the subject land have been admitted into evidence in this appeal.

not assessed by the DLGF. (Tr. at 87-89; I Ex. 40.) At the administrative hearing, Mr. Kelly did not know that the Harbor Works was located in East Chicago, not Hammond. (Tr. at 93-94.)

105. Mr. Kelly obtained the CLT Memo following questions from counsel for Ispat and the DLGF at his deposition in this appeal on December 10, 2004. (Tr. at 52, 86.) Following his deposition, Mr. Kelly prepared Lake County Ex. 14, "Land Pricing Scenarios." (Tr. at 54.) Lake County Ex. 14 applies the stipulated land acreage of 1,957.02 acres and allocates the acreage among primary (1,306.424 acres), secondary (269.987 acres), usable undeveloped (380.176 acres) and unusable undeveloped (.433 acre) land. Mr. Kelly determined the land allocations by reviewing the property record cards. (Tr. at 54.) Applying the methodology from the CLT memo, Mr. Kelly determined the following prices per acre: (1) with no influence factors - $61,355; (2) applying incremental adjustments only - $44,861; (3) applying incremental and oversized adjustments - $17,106. (Tr. at 56-58.) Mr. Kelly first testified that, if the CLT memo applies to value the Harbor Works' land, the correct value would be $17,106 per acre. (Tr. at 82; LC Ex. 14.) Mr. Kelly was then made aware that the CLT memo provides that the oversize adjustment will always be used on secondary, unused usable or unused unusable land. (Tr. at 103.) Then Mr. Kelly conceded that if the CLT memo applies, the correct land value is only approximately $12,200 per acre. (Tr. at 106.)

106. Mr. Kelly rejected each of his initial assessments of land and the CLT methodology for assessment. Instead, Mr. Kelly recommended application of the land value of $32,785, which is the value determined by Mr. Oetzel's appraisal. (Tr. at 64, 106.) Mr. Kelly did not investigate the sales used in the Oetzel Appraisal. Mr. Kelly disagreed with the size adjustments applied by in the Oetzel Appraisal. (Tr. at 109.) Mr. Kelly assumed the Solo Cup transaction relied upon by Mr. Oetzel was "more or less" correct. (Tr. at 101-12.) Mr. Kelly considered the Oetzel Appraisal to be the "best information" that he had been presented regarding land values at the Harbor Works. (Tr. at 152.)

107. Lake County did not meet its burden to establish a prima facie case that the DLGF erroneously assessed the land and improvements as of the March 1, 2002. The party challenging the assessment "must submit probative evidence sufficient to establish a prima facie case demonstrating the invalidity of the [DLGF's] final determination." *Inland Steel Co. v. Indiana State Bd. of Tax Comm'rs*, 739 N.E.2d at 211. "Probative evidence" is evidence that "tends to prove or disprove a point in issue." *Id*. Neither of Lake County's primary witnesses presented testimony or other evidence proving a proposed alternative value or disproving the DLGF's final determination of value.

108. Mr. Oetzel's appraisal lacks credibility and consequently provides no support for Lake County's claim. It is flawed because it does not properly describe the property, does not contain a legal description, incorrectly states that the Harbor Works has 4 blasts furnaces and a BOP, and incorrectly states that plate and

structural steel are produced at the Harbor Works. Mr. Oetzel's careless description of the property is symptomatic of the deficiencies that permeate his appraisal and value conclusion.

109. Mr. Oetzel's appraisal is flawed because it applies an arbitrary overall depreciation for functional obsolescence as a "hedge" against missed depreciation. This methodology accounts for no economic obsolescence, no environmental contamination, and no excess operating expenses. He made the adjustment despite knowing it is not a recognized appraisal concept.

110. Mr. Oetzel relied on the Solo Cup transaction to establish a +30 percent water frontage adjustment as part of his land analysis and insists that the sale represents an $8.9 million cash equivalency transaction. The evidence proves otherwise. The Solo Cup sale cannot reasonably be deemed a valid comparable sale. Without that sale, Mr. Oetzel's entire land analysis collapses. His land analysis lacks credibility and must be disregarded for this reason and many others.

111. Mr. Oetzel's appraisal does not apply the sales comparison approach, despite the availability of numerous comparable sales of integrated steel mills near the date of assessment. Bankruptcy sales can provide valid indications of market value, particularly when bankruptcy sales are the rule, rather than the exception, and when multiple parties are bidding to purchase the property.

112. The Oetzel appraisal fails to apply the income approach to value. Mr. Oetzel conceded that appraisers commonly value property on an income approach without market rental income. Mr. Oetzel himself has done so in valuing golf courses, hotels, landfills, and even an electric generating plant. Nevertheless, he inexplicably claims the income approach has no place in this analysis.

113. **[PARAGRAPH REDACTED]**

114. The Oetzel appraisal is flawed because it fails to account for economic obsolescence affecting the property as of the assessment date. That an industry is cyclical does not shield an industry from economic downturns affecting the value of real estate. In fact, it likely ensures them. Mr. Oetzel’s opinion to the contrary carries no probative value. *Id.*

115. The Oetzel appraisal is flawed because it violates USPAP. It claims to be a self-contained appraisal report, but it contains virtually no data supporting its conclusions. No reader of the appraisal could read the appraisal alone and understand the rationale for the opinion and conclusion, in violation of Standards Rule 2-2(a)(ix).

116. Mr. Kelly's analysis is flawed as well. He did little, if anything, more than transfer information from property records of unknown origin to a spreadsheet and call it a reproduction cost analysis. He did not confirm the source of the

information on the property record cards and took no measurements to confirm data on the property record cards. Mr. Kelly did not even bother to check the property record cards in his possession against the parcels actually assessed by the DLGF, resulting in a "preliminary assessment" that included property not owned by Ispat.

117. Mr. Kelly's analysis is flawed because he relied solely on reproduction cost and did not use replacement cost. The Manual and Guidelines, Appendix F, page 18 (obsolescence for special use properties), provides that replacement cost, as opposed to reproduction cost, is the preferred method of cost estimation. Yet Mr. Kelly, time and again, insists that reproduction cost is preferred. Even if reproduction costs were preferred, Mr. Kelly did not eliminate a single abandoned building (of which there were many), even though Appendix F, page 19, provides "Any portion of the facility not in use . . . as of the assessment date requires adjustment under the value-in-use estimate. The assessor should *subtract the cost of such improvements* from the reproduction cost prior to adjusting for physical, functional and external obsolescence." (emphasis added.) Thus, even if Mr. Kelly had properly used reproduction cost, which he did not, he violated explicit instructions to subtract the cost of abandoned buildings from his valuation. Such mistakes indicate that he work is not credible and it has no evidentiary value.

118. Mr. Kelly's analysis is flawed because he, as did Mr. Oetzel, concluded that the only way the sale of an integrated steel mill could be a value-in-use transaction is if it is a sale of the real estate only and contains no personal property and no intangible assets. This is wrong. Sales of integrated steel mills for continued use as an integrated steel mills are properly used as comparables in the sales comparison approach. When a property is utilized at its highest and best use, its value in use and its value in exchange are the same. This statement is a correct statement of Indiana law. Mr. Kelly’s dispute with this statement demonstrates either unfamiliarity or lack of understanding of Indiana’s current assessment methodology. This problem demonstrates another reason that his work and testimony are not persuasive in this case.

119. Mr. Kelly's analysis of land value is flawed because it relies upon the land analysis in the Oetzel appraisal, which has so many flaws that it is not credible. Built on that foundation, Mr. Kelly’s analysis also is unsound and unreliable.

120. Lake County relied entirely on evidence that has no probative value. Lake County, therefore, has failed to present a prima facie case. Because Lake County has failed to present a prima facie case, its Form 139 appeal petition must be denied.

121. The denial of Lake County’s appeal does not end this matter. Although Ispat was not so dissatisfied with the DLGF’s assessment to file its own appeal, it presented evidence in an attempt to lower the assessment.

122. Indiana Code § 6-1.1-15-4(a)(2) provides that "[a]fter receiving a petition for review which is filed under section 3 of this chapter, the Indiana board shall conduct a hearing at its earliest opportunity. The Indiana board may: . . . (2) correct any errors that may have been made, and adjust the assessment in accordance with the correction."

123. The Board, therefore, will look to the evidence presented by Ispat to determine if there is sufficient proof of error to merit further action.

ISPAT'S POSITION

124. Ispat submitted an appraisal report prepared by American Appraisal Associates, Inc. (the "AAA appraisal") to support its contention that the assessed value of the Facility assigned by the DLGF is too high. (Tr. at 843; I Ex. 1.) The AAA appraisal is a summary appraisal report. (I Ex. 1, Vol. 1, Appraisal Summary Letter at 1.) Examining comparable land transactions, the AAA appraisal determined a total value of $38,121,000 for the 1,957.02 acres (or $19,479 per acre) for the Harbor Works. (Tr. at 1674-75; I Ex. 1, Vol. 1 at 9-47.) To value the subject improvements, the AAA appraisal applies all three of the traditional approaches to value, sales, income, and cost. (Tr. at 828; I Ex. 1.)

125. Under the comparative market transaction (or sales comparison) approach, the AAA appraisal analyzes the sales of five integrated steel mills to conclude a value of **[NUMBER REDACTED]**. (Tr. at 1559; I Ex. 1, Vol. 1 at 13-2.) Under the income approach, the AAA appraisal applies a business enterprise valuation methodology to conclude a value of **[NUMBER REDACTED]**. (I Ex. 1, Vol. 1 at 13-2.) Under the cost approach, the AAA appraisal uses a replacement plant methodology to conclude a value of **[NUMBER REDACTED]**. (Tr. at 1618-19; I Ex. 1, Vol. 1 at 13-2.) The AAA appraisal assigns the sales approach a **[NUMBER REDACTED]** percent weighting, the income approach a **[NUMBER REDACTED]** percent weighting, and the cost approach a **[NUMBER REDACTED]** percent weighting. (Tr. at 1760-61; I Ex. 1, Vol. 1 at 13-2.) Based on the respective weighting of each approach, the AAA appraisal concludes that that the true tax value of the Harbor Works as of the March 1, 2002, assessment date is **[NUMBER REDACTED]**. (Tr. at 1760-61; I Ex. 1, Vol. 1 at 13-2.)

126. The land value was determined by Anthony Wells, who led the appraisal team for AAA in valuing the Harbor Works. (Tr. at 1672.) The AAA appraisal determined that the highest and best use of the land as if vacant is for industrial purposes, similar to its present use as an integrated steel mill. (Tr. at 1679; I Ex. 1, Vol. 1 at 7-26.) The land is valued using the comparable market transactions (or sales comparison) approach. (I. Ex. 1, Vol. 1 at 9-1.) The value concluded by the appraisal was $19,479 per acre. This value is approximately 2½ percent higher than the $19,000 determined by the DLGF. (Tr. at 1675.)

127. AAA conducted a market investigation for comparable properties. (I Ex. 1, Vol. 1 at 9-1.) The investigation began in northwestern Indiana and then expanded to the southern area of Chicago in Cook County, Illinois. (I Ex. 1, Vol. 1 at 9-1.) Sites purchased for steel-related uses as well as truck/auto assembly uses were located in Indiana and Ohio and incorporated into the land valuation analysis. (I Ex. 1, Vol. 1 at 9-1.) There was not enough market data to conduct the analysis. (Tr. at 1680.)

128. The land sales are grouped into three (3) data sets: (1) industrial waterfront sites in Indiana and Illinois; (2) industrial land sales in Lake County and Cook County, Illinois; and (3) Greenfield sites in Indiana and Ohio. (I Ex. 1, Vol. 1 at 9-2.) Category 1 has seven transactions ranging in size from 36.27 to 118 acres, 740 to 4,062 feet of water frontage and prices per acre of $21,212 to $78,947. (I Ex. 1, Vol. 1 at 9-3.) Category 2 had seven transactions ranging in size from 55.08 to 434.04 acres and prices per acre of $10,213 to $64,325. (I Ex. 1, Vol. 1 at 9-4.) Category 3 has four transactions ranging in size from 670.84 to 1,731 acres and prices per acre of $3,530 to $13,667. (I Ex. 1, Vol. 1 at 9-5.)

129. The AAA appraisal broke the 132 separate parcels comprising the facility into 6 properties and 7 units. (Tr. at 1675-76.) The 6 properties are those described above (Plants 1-4 sites, the Property 5 site, and the Property 6 site). (Tr. at 1675-76.) Plant 2 was further divided into waterfront influence (250 acres) and non-waterfront influence (1,413.52 acres). (Tr. at 1676.) Plant 2 is on Lake Michigan; five of the six sites are located on the U.S. Ship Canal. The Property 5 site has no waterfront. (Tr. at 1678-79.) The AAA appraisal took this approach because, due to the large size and site characteristics of the subject property, the number of comparable sales available were difficult to work with "unless you broke it down trying to capture the characteristics" of the site. (Tr. at 1675.) Adjustment grids and explanations for the adjustments for each unit are provided. (I Ex. 1, Vol. 1 at 9-14, -20, -24, -28, -33, -37, -41, -46.) The final concluded value for each unit is as follows:

Parcel	Price per acre ($)	True Tax Value ($)
Plant 1 Site	25,000	1,402,000
Plant 2 Site (Waterfront)	40,000	10,000,000
Plant 2 Site (Non-Waterfront)	15,000	21,203,000
Plant 3 Site	24,000	1,236,000
Plant 4 Site	21,000	2,022,000
Property 5 Site	28,000	1,502,000
Property 6 Site	21,000	756,000
		Total: $38,121,000

130. In analyzing comparative transactions, the AAA appraisal considers factors including, but are not limited to, property rights or interest conveyed, date of sale (market conditions), financing, motivation, location (zoning), size, shape, topography, floodplain, utilities present, rail, and prospective use. (I Ex. 1, Vol. 1 at 9-1.) The dates of sale used in the AAA appraisal range from 1994 to 2004. (I

Ex. 1, Vol 1 at 9-3 to -5.) The AAA appraisal takes no adjustment for the date of sale because industrial land values in East Chicago remained stable over that ten-year time period. (I Ex. 1, Vol. 1 at 9-8 to -9.) Therefore, the AAA appraisal did not apply the Producer Price Index ("PPI") to adjust its March 1, 2002, assessed value determination to the January 1, 1999, valuation date. (Tr. at 1759.)

131. The AAA appraisal identifies, but gives little weight to, the Solo Cup sale because it was "influenced by Illinois economic incentives" and thus adjustments to the sale were "difficult to measure." (I Ex. 1, Vol. 1 at 9-3 & 9-21.) Mr. Wells testified that characteristics of the sale gave AAA "reservations" about its use because "there was quite a bit of economic incentives, and the City [of Chicago] was involved in it." (Tr. at 1684.) Therefore, the Solo Cup sale was not "indicative of value." (Tr. at 1684.) Prior to the hearing, Mr. Wells reviewed U.S. Steel's summary of the Solo Cup sale and concluded that no weight should be given to the transaction and that the $8.9 purchase price did not reflect the cash equivalency paid for 117 acres. (Tr. at 1865-66.)

132. The Harbor Works' water access was accounted for in the AAA appraisal. All comparable sales used to value the sites fronting water were adjusted to account for the water influence.

133. The Plant 2 site, located directly on Lake Michigan and the Indiana Harbor, was broken down into waterfront (250 acres) and non-waterfront (1,413.52 acres) influenced sites. (Tr. at 1697-98; I Ex. 1, Vol. 2, App. A (plat).) The 250 acres of waterfront influenced land on the Plant 2 site touches the U.S. Ship Canal and the Indiana Harbor, extending between 600 and 1,000 feet back. (Tr. at 1699-1700.) Waterfront sales were used to determine the assessed value of the 250 waterfront influenced acres, concluding to the value of $40,000 per acre based on a range of $22,273 to $41,558 for the three sales given the most weight. (Tr. at 1700; I Ex. 1 at 9-21.) Large industrial land sales (over 100 acres) in Indiana and Illinois and Greenfield sites in Indiana and Ohio were used to reach the conclusion of $15,000 per acre for non-waterfront influenced land. (Tr. at 1702-03; I Ex. 17 at 9-29.)

134. The comparable market transaction (or sales comparison) approach to value in the AAA appraisal is described as follows:

> The comparable market transaction approach is that approach in appraisal analysis that is based on the proposition that an informed purchaser would pay no more for a property than the cost of acquiring an existing property with the same utility. The comparable market transaction approach is particularly applicable when the market has sufficient quantities of reliable data.

(I Ex. 1, Vol. 1 at 6.)

135. Mr. Wells has valued multiple large industrial properties of one million plus square feet, including integrated steel mills valued on a continued use basis. (Tr. at 1670-71.) Mr. Wells personally inspected the subject property on at least three occasions and inspected each of the comparable properties used in the sales analysis of the AAA appraisal. (Tr. at 1672, 1732.) Mr. Wells described each of the comparable sales in his testimony before the Board. (Tr. at 1718-26.)

136. The AAA appraisal lists the following criteria for its investigation of comparable market transaction data:

> a. Sale date was within a reasonable time frame to the March 1, 2002 appraisal date. The selected sales took place between April 2002 and May 2003. These sales reflect the economic conditions of the period of time associated with the March 1, 2002 assessment date.
>
> b. Each of the sales was an integrated steel mill.
>
> c. Products produced at the mills were similar.
>
> d. The sales were arm's-length transactions.
>
> e. The transaction data that reflects the sale price of a single integrated steel mill could be obtained.

(I Ex. 1, Vol. 1 at 10-2 to -3.) "Research was conducted to ensure that the comparable transactions utilized herein contained only real property in accordance with generally accepted accounting principles (GAAP) standards." (I Ex. 1, Vol. 1 at 10-1.)

137. Each of the sales used as comparables was a purchase with the intent of resuming or continuing steel making operations. (I Ex. 1, Vol. 1 at 10-1.) Each reflects a market value-in-use transaction. (Tr. at 1716.) Dr. Jeffrey Fisher and Mr. Barrow testified that a sale price could reflect value-in-use where the buyers are putting the property to the same use. (Tr. at 1248; 1463.)

138. The AAA appraisal used five comparable sales: (1) Burns Harbor/ISG (Bethlehem) (May 2003); (2) Great Lakes/USS (National) (May 2003); (3) Indiana Harbor/ISG (LTV) (April 2002); (4) Granite City/USS (National) (May 2003); and (5) Cleveland/ISG (LTV) (April 2002). (Tr. at 1713-17; I Ex. 1, Vol. 1 at 10-4.) The AAA appraisal includes detailed data for each of the comparable transactions. Each of these sales is identified by the DLGF in the Barrow Report. (DLGF Ex. 1 at 11.)

139. The AAA appraisal includes a chart identifying additional information for each of the comparable integrated steel mills: (1) crude steel capacity; (2) real property

total sale price; (3) sale price for land; (4) sale price for improvements; (5) sale price of real property per ton of capacity; and (6) sale price of improvements per ton of capacity. (Tr. at 1716-17; I Ex. 1, Vol. 1 at 10-4.) The sale prices identified are the final allocations. (Tr. at 1718.)

140. Each of the comparable sales occurred while the owner was in bankruptcy. The sales were appropriate to use as comparables for determining the Harbor Works' market value-in-use as of the assessment date. Each of the sales was exposed on the market. Each of the sales had multiple bidders. Creditors attempted to receive the highest price for these properties. A large number of steel companies were in bankruptcy. The market for integrated steel mills consisted of properties whose owners were in bankruptcy. These sales represent the economic conditions at the time. (Tr. at 1714-15.)

141. The AAA appraisal asserts that the best unit of comparison for these integrated steel mills is dollars per crude ton of capacity "because this is what the purchaser is buying." (I Ex. 1, Vol. 1 at 10-2.) The AAA appraisal further explains, "This unit of comparison reflects the economics of a particular steel mill regardless of the occupancy or condition of buildings and more accurately reflects the motivations of market participants." (I Ex. 1, Vol. 1 at 10-2.)

142. The AAA appraisal's comparable market transaction approach was not limited to the consideration of raw steel making capacity for each comparable. (Tr. at 1727.) It also examined various components of each comparable integrated steel mill and compared those components with the subject. (Tr. at 1730; I Ex. 1, Vol. 1 at 10-2.) The AAA appraisal further asserts that an operating integrated steel mill "derives its value from the operations contained in the structures and on the site. Therefore, the comparison of the appraised property with sales of the other comparable integrated steel mill takes into account, in addition to considering the age, condition, and features of the real estate, the desirability of the total functional operations of the real estate and equipment merged." (I Ex. 1, Vol. 1 at 10-6.) For each comparable sale, the AAA appraisal compares the desirability of the integrated steel mill's major components, as well as the plant's overall physical condition and layout as well as R&D-related facilities. (I Ex. 1, Vol. 1 at 10-6.) Following are the major components compared between the subject and the comparable sale: (1) coke ovens; (2) blast furnaces; (3) steel furnaces; (4) continuous slab casters; (5) reheat furnace-hot strip; (6) carbon hot strip mills; (7) carbon plate mills; (8) pickling lines; (9) carbon cold reduction mills; (10) continuous anneal and heat treating lines; (11) select carbon- temper mills; (12) 12" bar mill; and (13) galvanize, aluminum, and terne lines.

143. Mr. Wells relied on World Steel Dynamics (WSD)—a recognized source within the steel industry for evaluating physical and functional factors of steel mill assets—to compare the major components. (Tr. at 1730-31; I Ex. 1, Vol. 1 at 10-6.) WSD is an independent source that annually publishes its findings in a document titled *North American Producer Facility Ratings*, which applies a five-

star rating system to assess the major components. (Tr. at 1730-31; I Ex. 1, Vol. 1 at 10-6.) The ratings range from one star (very low) to five (very high). (Tr. at 1730-31; I Ex. 1, Vol. 1 at 10-6.) For areas of comparison where a WSD rating was not available, a similar rating concept was assigned by AAA based on knowledge of the individual facilities and appraiser judgment. (Tr. at 1731; I Ex. 1, Vol. 1 at 10-6.) Areas where judgment was made include (1) the reheat furnace – hot strip, (2) the select carbon temper mill, (3) overall physical condition, (4) plant layout, and (5) R&D facilities. (Tr. at 1731-33; I Ex. 1, Vol. 1 at 10-7.)

144. The AAA appraisal uses the rating system on a relative basis to establish the two major considerations for any comparable analysis. Those considerations are direction and quantification. (Tr. at 1731; I Ex. 1, Vol. 1 at 10-7). Direction involves whether the sale is inferior or superior to the subject. (Tr. at 1731; I Ex. 1, Vol. 1 at 10-7). Quantification involves determining how much the value of the subject differs from the known sale price of the comparable. (Tr. at 1731; I Ex. 1, Vol. 1 at 10-7).

145. The AAA appraisal provides an analysis grid for the components of each comparable sale, placing the rankings of the subject side-by-side with the comparable. (I Ex. 1, Vol. 1 at 10-14 (Burns Harbor), **[NUMBER REDACTED]** (Great Lakes), **[NUMBER REDACTED]** (Indiana Harbor), **[NUMBER REDACTED]** (Granite City) & **[NUMBER REDACTED]** (Cleveland).) Prior to each grid analysis, the AAA appraisal provides a narrative explaining the rating applied to the subject and the comparable sale. (I Ex. 1, Vol. 1 at 10-8 to -13 (Burns Harbor), 10-15 to -19 (Great Lakes), 10-21 to -25 (Indiana Harbor), 10-27 to -31 (Granite City) & 10-33 to -37 (Cleveland).) In the grid analysis, each star was counted as one point, except for the cold mill and coating areas, which were rated at only 50 percent of the other areas. (Tr. at 1733; I Ex. 1, Vol. 1 at 10-7.) For each component, the grids show either a positive point score, whereby the subject's component is superior with respect to the comparable's, or a negative point score, whereby the subject's component is inferior to the comparable's. (I Ex. 1, Vol. 1 at 10-7.) These scores are then summed to find a composite rating for each comparable sale. (I Ex. 1, Vol. 1 at 10-8.) "A negative rating indicates that the subject is inferior to the sale, and the subject unit value should be less than the sale. A positive rating indicates the subject is superior to the sale, and the unit value of the subject should be higher than the sale comparable." (I Ex. 1, Vol. 1 at 10-39.) The AAA appraisal identifies the relative composite ratings and the sale prices of improvements per ton of crude steel capacity of the comparable sales as follows:

[REMAINDER OF PARAGRAPH REDACTED]

146. **[PARAGRAPH REDACTED]**

147. **[PARAGRAPH REDACTED]**

148. The sales approach analysis in the AAA appraisal is for improvements only. (I. Ex. 1, Vol. 1 at 10-5.) The AAA appraisal states that the concluded value for land of $38,121,000 is appropriate, in light of the extensive investigation of the subject site under the land analysis. (I. Ex. 1, Vol. 1 at 10-5.) Adding the improvement value of **[NUMBER REDACTED]** to the land value of $38,121,000 equals a value of **[NUMBER REDACTED]**, rounded to **[NUMBER REDACTED]**. (Tr. at 1759-60; I Ex. 1, Vol. 1 at 10-43.)

149. Mr. Andrew Fargason, a Certified Financial Analyst for AAA, was primarily responsible for preparing the income approach analysis in the AAA appraisal. (Tr. at 1203-04.) The AAA appraisal defines the income approach as:

> The income approach is the conversion of expected periodic benefits of ownership into an indication of value. It is based on the principal that an informed buyer would pay no more for a property than an amount equal to the present worth of anticipated future economic benefits from the same or equivalent property with similar risk.

(I Ex. 1, Vol. 1 at 6.) Because steel mills are not typically leased, the AAA appraisal determined an overall business enterprise value using the income approach and then derived the value of the subject real property from the overall business enterprise value. (I Ex. 1, Vol. 1 at 11-1.)

150. The AAA appraisal defines "business enterprise" as the "combination of all tangible assets (property, plant and equipment and normal working capital) and intangible assets of a continuing business. Alternatively, it is equivalent to the invested capital of a business; that is, the combination of the value of the stockholders' equity and interest-bearing debt." (I Ex. 1, Vol. 1 at 11-10.)

151. The AAA appraisal explains the application of the business enterprise value methodology to market value-in-use as follows:

> In the case of a property appraised under the premise of market value in continued use, the prospective earnings of the enterprise with which the real property is associated must provide an adequate return on the level of investment required. The concluded market value of the real property will be limited by the total market value of the business enterprise less amounts reflecting the estimated values of other assets owned, such as personal property, current accounts, and intangible assets.

(I Ex. 1, Vol. 1 at 11-1.)

152. **[FIRST SENTENCE REDACTED]** Mr. Fargason has made numerous business enterprise valuations for large companies. In most cases, he uses a discounted cash flow analysis. He uses the weighted average cost of capital. He applies the capital asset pricing model (CAPM) to determine the cost of equity capital. The CAPM is the standard finance tool to identify the cost of equity capital. (Tr. at 1201-03.)

153. To conclude to an enterprise value, AAA conducted interviews with management, collected historical financial statements for the period 1993-2001, and performed a discounted cash flow analysis. (Tr. at 1205, 1212.)

154. **[PARAGRAPH REDACTED]**

155. The cost approach is based on the proposition that an informed purchaser would pay no more for a property than the cost of producing a substitute or replacement property with equivalent utility to the subject. (I Ex. 1, Vol. 1 at 12-3.) Lee Hackett, Executive Vice President of AAA, was primarily responsible for preparing the cost approach analysis in the AAA appraisal. (Tr. at 830, 845-46.) Mr. Hackett has appraised approximately 12 steel mills, including 11 integrated steel mills, in his career with AAA. (Tr. at 812, 823.) All members of the AAA appraisal team visited the Harbor Works, and AAA conducted several inspections of the property. (Tr. at 1858-60.)

156. The AAA appraisal determines replacement cost for the subject improvements. (I Ex. 1, Vol. 1 at 12-4; Vol. 2, App. K.) Mr. Hackett outlined the development of the cost approach as follows:

> The cost approach was developed in this case by looking firstly at a replacement facility which has been described in this proceeding as it had been developed by Dr. George St. Pierre working with operating people at the Harbor Works. [AAA] ultimately chose to start the development of the cost approach based upon replacement costs. [AAA] did also calculate reproduction cost of remainder value based on reproduction costs, but the starting point in development of the cost approach was the replacement cost on a remainder value basis, replacement cost less physical deterioration.
>
> Functional obsolescence was determined in several categories; again, comparing the subject facility with the replacement facility that would be viable from an operating perspective. Looking at the costs of operation in the existing subject facility as compared with the replacement facility, looking at excess capital investment, which has been defined in terms of inventory and in terms of redundant capital equipment.

> [AAA] also took into consideration external obsolescence, and [AAA] took into consideration environmental remediation and costs that were in existence as of the assessment date of March 1, 2002.

(Tr. at 1575-76.)

157. Dr. George St. Pierre, assisted by Ispat employees, designed the replacement plant used as the basis for the functional obsolescence analysis in the cost approach. (Tr. at 835, 1030-32; I Ex. 1, Vol. 1 at 12-4.) He is a metallurgist who has toured and observed the product flow of approximately 40 integrated steel mills world wide. He has toured the Harbor Works many times since working there in the 1950s. He has consulted on numerous steel related issues and taught courses on the optimization of iron and steel making. (Tr. at 716-27; Ex. 5.) Dr. St. Pierre met with Ispat personnel to discuss Ispat's operations as of March 1, 2002. (Tr. at 1033.) He used modern materials and construction methods to design the replacement plant. (Tr. at 1031.) He used only the technology actually in use at the Harbor Works as of March 1, 2002, in the replacement plant design. (Tr. at 1032.) The replacement plant is designed to perform at the same production levels as existed on the assessment date. (Tr. at 1032.) The replacement design has a process flow similar to that of the Burns Harbor plant, the last integrated steel mill constructed in the United States in the 1960s, which has a proper alignment of buildings for process flow. (Tr. at 1037, 1044-47; I Ex. 18.)

158. The AAA appraisal states:

> The designed layout of the replacement plant uses proven technology currently in use in the steel industry, but more importantly, takes advantage of just the Subject Property site area to combine iron making and steel making facilities, and to further utilize close coupling of the finishing facilities to reduce the numerous excessive transportation expenses that have evolved through the decades as operations were added to the Ispat Inland Facility.

(I Ex. 1, Vol. 1 at 12-4 to -5.)

159. Volume 2, Appendix Q, page 4 is a map of the replacement plant, showing the product flows for iron making, steel making, hot rolling, and cold rolling points. The replacement plant is designed to provide capacity sufficient to produce and ship the same tonnage and mix of products as the capacity of the Ispat Inland Facility. (I Ex. 1, Vol. 1 at 12-5.) The AAA appraisal provides a summary comparing the components of the subject facility with the replacement plant's components on page 12-6. The map also identifies the refuse/waste removal

points and the shipping points for the replacement plant. Ispat Exhibit 30 is a narrative of the process flows, refuse/waste removal points and shipping points at the replacement plant. Dr. St. Pierre described each process flow and point. (Tr. at 1050-68.) The total number of movements in the replacement plant is as follows:

[REMAINDER OF PARAGRAPH REDACTED]

160. The excess construction cost attributable to the facility was determined by estimating the remainder value based on reproduction and the remainder value based on replacement. (Tr. at 1570-71; I Ex. 1, Vol. 1 at 12-7.) Remainder value is the cost new less depreciation. (Tr. at 1139-40.) Therefore, the calculation of excess remainder value is the calculation of depreciated excess construction cost. (Tr. at 1572; I Ex. 1, Vol. 1 at 12-8.)

161. Mr. Kevin Reiter, a Real Estate Tax Analyst, who applied the Indiana Manual and Guidelines in his analysis, determined the remainder values. (Tr. at 1126, 1571; I Ex. 1, Vol. 1 at 12-7.) His complete cost analysis is contained in the AAA appraisal, Volume 2, Appendix K, pages 4-28 (replacement) and 29-189 (reproduction). Mr. Reiter is a Level II Indiana assessor/appraiser who has priced approximately 250-300 industrial properties (including five steel mills) in Indiana over the last decade. (Tr. at 1108-11.) He toured the Harbor Works approximately 13 times and has personally inspected buildings comprising 90 percent of the Harbor Works' total cost. (Tr. at 1124-26.) Mr. Reiter spent almost 300 hours converting the Harbor Works' 1993 property record cards to values that purport to use the 2002 Guidelines. (Tr. at 1138.) In determining grades and use-types for the reproduction and replacement cost in Appendix K, Mr. Reiter purports to apply the grades and use types determined by the State Board of Tax Commissioners in connection with the 1993 tax appeal. (Tr. at 1142.) Mr. Reiter's analysis removes all buildings torn down as of March 1, 2002. (Tr. at 1145.)

162. Mr. Reiter testified that the "vast majority" of buildings used in the replacement plant are part of the subject plant. They have simply been reconfigured. (Tr. at 1147.) **[SENTENCE REDACTED]** Mr. Reiter did no design work for the replacement plant. He merely priced the buildings included in the replacement plant. (Tr. at 1146.)

163. Ispat asserts that remainder value based on reproduction cost is **[NUMBER REDACTED]**. (Tr. at 1570; I Ex. 1, Vol. 1 at 12-8.) Ispat asserts that remainder value based on replacement cost is **[NUMBER REDACTED]**. (Tr. at 1571; I Ex. 1, Vol. 1 at 12-8.) Ispat asserts that the difference between the two, **[NUMBER REDACTED]**, is excess remainder value. (I Ex. 1, Vol. 1 at 12-8.)

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164. Ispat asserts that excess operating expenses result when the operating expenses of the subject property are greater than those of a modern replacement. (I Ex. 1, Vol. 1 at 12-8.) Ispat calculates the excess operating expense by capitalizing the annual excess operating expenses over the remaining life of the facility. (I Ex. 1, Vol. 1 at 12-8.) The AAA appraisal, Volume 2, Appendix Q identifies what Ispat asserts is the excess annual operating expenses related to the different layouts between the reproduction (subject) and the replacement plants. **[REMAINDER OF PARAGRAPH REDACTED]**

165. The AAA appraisal concludes, "In our judgment, the excess annual operating expenses were reasonably calculated . . . ."

166. For purposes of allocating the operational expenses between real and personal property, AAA used the relationship between the real and personal property's remainder values as of March 1, 2002. (I Ex. 1, Vol. 1 at 12-12.) The allocation quantification is described in the AAA appraisal, Volume 2, Appendix L. **[SENTENCE REDACTED]** "Only those excess operating expenses attributable to the real property were used to determine the functional obsolescence attributable to the subject property improvements." (I Ex. 1, Vol. 1 at 12-12.)

167. The AAA appraisal, Vol. 2, Appendix M provides the calculation of the discount rate **[NUMBER REDACTED]** for the excess operating expenses. (Tr. at 1584.) Excess operating expenses must be discounted to present value, because they represent the expense for one year, but will continue for the estimated remaining life of the property. (Tr. at 1584-85.)

168. The AAA appraisal calculates the penalty for excess operating expenses relating to iron making and hot rolling is **[NUMBER REDACTED]**. (I Ex. 1, Vol. 1 at 12-17, Vol. 2, App. M.)

169. The AAA appraisal calculates the penalty for excess operating expenses relating to the cold mill complex operations is **[NUMBER REDACTED]**. (I Ex. 1, Vol. 1 at 12-17, Vol. 2, App. N.)

170. The AAA appraisal identifies and quantifies excess inventory investments. Ispat calculated the cost of the excess inventory invested necessary to support the facility operations as compared to the replacement facility. (I Ex. 1, Vol. 1 at 12-16.) AAA calculated the cost to carry the excess inventory over the remaining useful life of the facility. (Tr. at 1599.) The penalty calculated is **[NUMBER REDACTED]**. (I Ex. 1, Vol. 1 at 12-18, Vol. 2, App. O.)

171. The AAA appraisal identifies and quantifies excess mobile equipment and cranes, required in the Facility but not the replacement plant. (Tr. at 1602-04.) The penalty for each was calculated based on depreciated costs using the appropriate pools from Ispat's 1999 personal property tax return. (I Ex. 1, Vol. 1 at 12-16.) The penalty calculated for excess mobile equipment is **[NUMBER**

REDACTED]. (I Ex. 1, Vol. 1 at 12-18, Vol. 2, App. P.) The penalty calculated for excess cranes is **[NUMBER REDACTED]**. (I Ex. 1, Vol. 1 at 12-18, Vol. 2, App. P.)

172. The AAA appraisal concludes that, as a result of efficiencies in layout and use of current technology in steel making, a replacement plant would require **[REMAINDER OF SENTENCE REDACTED]**. (I Ex. 1, Vol. 1 at 12-16 to -17.) The market value for this land is Plant 1 **[NUMBER REDACTED]**, Plant 2 **[NUMBER REDACTED]**, and Plant 4 **[NUMBER REDACTED]**. The total penalty is **[NUMBER REDACTED]**. (I Ex. 1, Vol. 1 at 12-17.)

173. Economic (external) obsolescence is the loss in value resulting from influences external to the property itself. AAA was advised by counsel to consider as a base estimate for economic obsolescence the **[NUMBER REDACTED]** percent applied by the State Board in the 1993 appeal of the Harbor Works' Plant 2. (Tr. at 1605-06; I Ex. 1, Vol. 1 at 12-19; I Ex. 15 at 48 ¶ 200.) AAA conducted a study of factors indicative of the presence of economic obsolescence since 1993. (Tr. at 1607-16; I Ex. 1, Vol. 2, App. T.) The factors included declining production, utilization, prices, and consumption.

174. Ispat asserts that these indicators showed a declining trend that reflects an increase in economic obsolescence in the range of **[NUMBER REDACTED]** percent to **[NUMBER REDACTED]** percent. (I Ex. 1, Vol. 1 at 12-19, Vol. 2, App. T.) Ispat asserts that because there is evidence of an increase in the amount of economic obsolescence, it is reasonable to conclude that economic obsolescence as of the assessment date attributable is at least **[NUMBER REDACTED]** percent. (I Ex. 1, Vol. 1 at 12-19.)

175. **[PARAGRAPH REDACTED]**

176. The AAA appraisal, Volume 1, page 12-21, concludes to a value of **[NUMBER REDACTED]** under the cost approach with application of functional and economic obsolescence.

177. Ispat’s appraisers placed most of the weight in their final conclusion of value on their comparable sales approach. That approach, however, was limited to valuing the improvements. That approach is unreliable because it was based solely on bankruptcy sales, and ignored the one truly comparable sale—the sale of the subject property itself. Ispat’s appraisers did not independently determine the proportion of the sales price attributable to value of these improvements, but simply relied on the buyer’s financial statement of improvement values.

178. Ispat's sales comparison approach consisted of comparing the Harbor Works' real property to five bankruptcy asset sales, and ignoring the only truly comparable sale, the 1998 sale of Inland Steel to Ispat International, which was not a bankruptcy sale. As explained below, that methodology does not yield a reliable valuation of the subject property. Accordingly, Ispat's sales comparison approach is not accepted.

179. The Indiana Manual provides that the sales comparison approach is one of three valid methods that should be considered in determining the true tax value of a particular property. The sales comparison approach "estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market." However, a prerequisite to utilizing this method is having access to reliable data from the market with which to compare the subject property.

180. The DLGF properly concluded that as of March 1, 2002, that Ispat was not under the kind of duress present in a bankruptcy proceeding. Accordingly, in its assessment of Ispat, the DLGF gave 100 percent weight to the 1998 sale of Ispat, and rejected the other bankruptcy sales.

181. Ispat rejected the only truly comparable sale – the 1998 sale of Inland Steel, Inc. to Ispat – and relied instead on bankruptcy sales. The reliability of the comparable sales approach is dependent upon having sales that are truly comparable. With respect to the 1998 sale of Inland Steel, Barrow testified, "You couldn't find a better comparable." (Tr. 1422.)

182. The reason given by Ispat's appraiser for ignoring the only truly comparable sale rings hollow and appears to be a weak *post hoc* rationalization. Although he did not qualify as a steel industry expert, Mr. Wells testified that he thought the steel economy had deteriorated too much between 1998 and 2002 to use the 1998 sale as a comparable. Notably, Mr. Wells' written appraisal report does not contain this claim. Despite Mr. Wells' protest that the steel economy had deteriorated too much by 2002 to use a 1998 or earlier sale to value real estate, he himself used such sales to value the land. *See, e.g.*, Ispat Ex. 1, Vol. 1, Section 9-3 (one 1998 sale and one January 1999 sale); Section 9-4 (one 1994 sale and one 1999 sale); Section 9-5 (one 1994 sale, one 1995 sale and two 1996 sales). Moreover, he concluded the market conditions were similar to the subject's for all these sales. Therefore, he made no time adjustment. *Id.* Sections 9-14, 9-20, 9-24, 9-28, 9-33, 9-37, 9-41. Mr. Wells' rationalization for avoiding the one truly comparable sale is not credible.

183. In the case of the DLGF's use of the Ispat sale, the Board was presented with the D&T allocation appraisal that it could evaluate. In the case of Ispat's comparable sales, there is no probative evidence to prove that the bankruptcy sale prices attributed to improvement values correlated with the actual value of the improvements. Therefore, the Board has no evidence on which it can conclude that those allocations represent a value-in-use of the improvements that can be compared to the subject property.

184. Ispat's reliance on financial statement allocations of improvement values without probative evidence of how those allocations were performed undercuts the reliability of Ispat's entire sales comparison analysis.

185. Ispat's use of tons of raw steel produced as a benchmark for its sales comparison approach is not a reliable basis for comparing integrated steel mills. The use of that benchmark also undercuts the reliability of its entire comparable sales analysis. It is illogical to compare the enterprise value of one integrated steel mill to other steel mills based solely upon capacity for raw steel production as Ispat's appraisal attempts to do because integrated steel mills such as Ispat produce much more than raw steel. Because Ispat's sales comparison approach is based on the flawed premise that integrated steel mills can be valued by considering only production of raw steel, the Board rejects Ispat's sales comparison approach as unreliable.

186. Ispat asserts that the remainder value of the Harbor Works' improvements should be reduced by **[NUMBER REDACTED]** to account for excess construction costs based on the difference in construction costs for the improvements that exist on the site and those it calculates for the replacement plant. It describes this particular species of excess construction costs as "one element of functional obsolescence." Ispat then asserts that an additional **[NUMBER REDACTED]** in value should be stripped off because of additional functional obsolescence in the form of excess operating expenses and excess capital improvements that it calculated by capitalizing the value of operating expenses and property investments it says it would save by replacing the subject improvements with an ideal replacement plant. Ispat Ex. 1, Vol. 1, Section 12-18.[4]

187. Ispat is not entitled to the massive deduction it proposes to take for functional obsolescence. Ispat presented no probative evidence at the hearing supporting the proposition that the utilization rate is lower than the industry average. On the contrary, the evidence shows that Ispat's

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[4] This capitalization is based on the same debt equity ratio used in Ispat's income approach. Tr. 1585-87 (Hackett). As explained herein, that debt-equity ratio is unsupportable.

utilization rate was higher than the industry average. The average utilization rate for steel companies in 2002 was only **[NUMBER REDACTED]** percent, while Ispat's utilization rate was **[NUMBER REDACTED]** percent.

188. Economic obsolescence is the last element in Ispat's cost analysis. The Assessment Guidelines provide that "[a]ppraisers sometimes use no external obsolescence adjustments at all for special-use properties because the appraisal is for value-in-use as opposed to value-in-exchange," and the owner's on-going use of the facility shows its value. The Guidelines direct that external obsolescence may be computed by a comparison of the long-term utilization rate of a facility to its short-term utilization. Lake County Ex. 11, at 20.

189. Rather than analyzing economic obsolescence in the manner set out by the Guidelines, Ispat's appraisers simply adopted the amount of economic obsolescence that the Indiana State Board allowed under the previous true tax value standard for 1993. As the DLGF pointed out, this action ignored the requirement under the 2002 Manual and Guidelines that a market study of objectively verifiable data be done. The 1989 Manual, which was in place for purposes of the 1993 case, had a totally different standard for true tax value. Therefore, the obsolescence amount suggested by Ispat has no relevance for the 2002 assessment.

190. The steel industry is subject to predictable cycles. Investment in the steel industry is capital-intensive. Strategic investors look past short-term cycles and instead focus on long-term performance in the industry. (Tr. 686.)

191. The DLGF rejected the income approach because "the subject and comparable properties are not investment properties that are rented in the marketplace." (Lake County Ex. 7, at 7; Tr. 1259, 1260.) The Indiana Manual does not provide for any other method for applying the income approach. (Tr. 1419.)

192. The witness who performed the income approach for Ispat was not an expert in Indiana property law, not an accountant, and not a steel industry expert. Ispat's income approach in this case was unprecedented, even for Ispat's income analyst Fargason. According to Mr. Fargason, he has never before utilized a business enterprise valuation where the objective was to value the real estate and not the other assets. (Tr. 1281.)

193. Accordingly, the DLGF properly rejected the income approach.

194. Ispat's income approach should be rejected out of hand because it did not introduce admissible evidence establishing the reliability of the pricing projections fundamental to its business valuation. According to Ispat's income analyst Fargason, he did not prepare the key pricing projections on which the income approach is based. Rather, Ispat's chief financial officer made those subjective projections. Ispat chose not to bring Mr. Rippey to testify and be subject to cross-examination. The evidence of what Fargason recalled him saying, however, was admitted over Lake County's objection to show the basis of the expert's opinion. (Tr. 1206-09.)

195. Even though this evidence was admitted, it is hearsay. It should not form the basis for the assessment over the proper objection of Lake County. In a case of this magnitude, Ispat should allow cross-examination of its executive's reasoning for his projections. The Board needs more than hearsay to determine what reasonable pricing projections would be.

196. Ispat's complete disregard of its 1998 purchase of the Harbor Works from Inland casts serious doubt on the reliability of its appraisal. This is particularly true in light of the fact that Ispat did not appeal the DLGF's assessment, which was primarily based upon that sale. While the appraisal used the theoretical approaches to obtaining market value in use, those approaches are designed to reach a value that the user would accept for the property. The actual sale of the property reflects all of the theoretical elements used to calculate market value in use even better.

197. The fact that Ispat completely ignored the actual sale of he subject property coupled with the fact that it did not appeal the DLGF's assessment, weigh against its argument that the DLGF's value is erroneous. This point is particularly true when considering land value. The land value opinion from AAA supports the DLGF's findings. Ispat's belated argument that the Board should adopt a lower value found by Cole-Layer-Trumble does not establish, without further proof, that the DLGF's value is erroneous. Without such a showing, the Board will not change the DLGF's findings. Any other argument presented by Ispat is waived by its failure to appeal the assessment.

CONCLUSION

198. Lake County failed to establish a prima facie case that the DLGF's assessment was erroneous.

199. Ispat also failed to prove that there is an error in the assessment that the Board must correct.

200. In the final analysis, the use of the sale of the Inland property to Ispat is most indicative of the value-in-use of the Harbor Works. Because that sale was an arm's length sale that was not in bankruptcy and was a sale of the subject property, the theoretical concepts relied upon by Ispat would have been included in the ultimate price of the plant. Neither Lake County nor Ispat presented convincing evidence that the current assessed value of Harbor Works is erroneous. Furthermore, the DLGF provided evidence to support its assessment in light of the evidence presented by Lake County and Ispat.

201. The law and the facts are with the Department and against Lake County and Ispat.

IT IS THEREFORE ORDERED, that the Department's assessment of $81,717,900 is affirmed.

July 8, 2005

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Terry G. Duga, Commissioner
Indiana Board of Tax Review

- Appeal Rights -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at <http://www.in.gov/judiciary/rules/trial_proc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.